IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1512 OF 2004

Shailendra Sahedeo Mondkar
aged 40 years, son of
Sahedeo, Indian citizen,
employed as stamp vendor
postman, in the office of
Bharat Chamber Post Office,
Kalbadevi, Bombay-400 002
(R/at: 2/12, Kokan Sahajivan
C.H.S., Sarvodaya Nagar, Bhandup (W),
Mumbai 400 048. Petitioner

vs.

1.The Union of India,
Through the Chief Post Master,
General, Maharashtra Circle,
G.P.O., Bombay 400 001.

2.The Director of Postal Services,
Mumbai Region, Office of C.P.M.G.,
G.P.O, Bombay 400 001.

3.The Sr.Supdt. of Post Offices,
Bombay City South Division, Indian
Globe House, Bombay 400 001. Respondents

Mr.S.P.Saxena for the petitioner.

Mr.D.A.Dubey with Mr.Y.S.Bhate i/b.Mr.S.S.Sarkar for the respondent no.1.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 31st March 2005

ORAL JUDGMENT (Per R.M.Lodha,J.):

The petitioner, by means of this writ petition, challenges the order dated 19th June 2003 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai. By the said order, the Central Administrative Tribunal dismissed the petitioner's Original Application

challenging the order of reduction of pay dated 31st December 1999 and the orders of the Appellate, Revisional and Reviewing authority.

2. The petitioner was selected as stamp vendor-postman and joined his post on 13th October 1979. During the period from 21.01.1985 to 08.09.1993, the petitioner was posted as Departmental stamp vendor in Tajmahal Post Office. On 6th September 1993, three foreign parcels were booked at the said post office. The petitioner in respect of one parcel accepted the sum of Rs.2955/- for the postage stamps; prepared in his own handwriting the postal receipt bearing no.188 for Rs.2955/- and affixed the postage stamps worth Rs.2625/- only on the said parcel. He failed to account for the sum of Rs.330/-. The petitioner was proceeded with disciplinary proceedings and was charged for misconduct in terms of Rule 3(1)(i) and (iii) of the CCS (CCA) Rules, 1964.

3. The petitioner was also prosecuted for the offences punishable under Sections 406, 409, 418 and 34 of Indian Penal Code along with the other employee Ramesh Bhagwantrao Jirafe.

4. The petitioner is said to have applied to the disciplinary authority for deferring the disciplinary proceedings until conclusion of criminal trial. But

that prayer was not accepted. In the disciplinary proceedings the charges against the petitioner were held to be proved and by order dated 31st December 1999 penalty was imposed on him thereby reducing his pay to minimum of the stage of pay of his present grade for a period of 5 years without cumulative effect.

5. The order of penalty in disciplinary proceedings came to be challenged by the petitioner by filing an appeal before the Appellate Authority. The Appellate Authority did not find any infirmity in the order of penalty dated 31st December 1999 and dismissed the appeal on 27th June 2000.

6. The petitioner carried the matter to the Revisional Authority by filing Revision under CCS(CCA) Rules, 1964.

7. It may be noticed here that the Criminal Court vide its judgment and order dated 18th November 2000 acquitted the petitioner honourably.

8. Armed with the judgment of acquittal dated 18th November 2000, the petitioner made an application on 16th February 2001 for review of the order dated 31st December, 1999 imposing penalty on him. It was prayed in the review application that in view of the acquittal in the criminal case, the order passed by the

disciplinary authority on 31st December 1999 be revoked.

9. The review application came to be rejected on 27th March 2001. The Revision Application filed by the petitioner challenging the order of disciplinary authority and the Appellate Authority also came to be rejected by the Revisional Authority (Chief Post Master General, Maharashtra Circle, Mumbai) on 20th August 2002.

10. Upset by the order of the disciplinary authority dated 31st December 1999 and the orders of the appellate authority, the reviewing authority and the revisional authority passed on 27th June 2000, 27th March 2001 and 20th August 2002 respectively, the petitioner knocked the door of Central Administrative Tribunal by filing the Original Application. After hearing the parties, the original application was dismissed by the Central Administrative Tribunal on 19th June 2003. Aggrieved thereby, the present writ petition has been filed.

11. The contention of the learned counsel for the petitioner is that the charge in the disciplinary proceedings and the criminal proceedings was same; the evidence of the parties was also same and when the Criminal Court acquitted the petitioner and the accusations against the petitioners were held not proved

in the criminal proceedings, the punishment order passed in disciplinary proceedings cannot legally stand based on same charge and same set of evidence. He submitted that as a matter of fact the petitioner prayed that the disciplinary proceedings be deferred until conclusion of criminal trial but that prayer was wrongly turned down. He relied upon the judgment of the Supreme Court in the case of Capt.M.Paul Anthony v. Bharat Gold Mines Ltd. & anr., (1999) 3 S.C.C.679.

12. On the other hand, the learned counsel for the respondents supported the order of the Central Administrative Tribunal and the punishment awarded to the petitioner in the disciplinary proceedings.

13. We thoughtfully reflected over the matter and, in our considered view, there is no merit in the contention of the learned counsel for the petitioner.

14. The legal position appears to have been crystalised that the proceedings in the criminal case and the departmental proceedings can continue simultaneously. The pendency of the criminal proceeding does not bar the taking of the disciplinary action. In a fact situation where the departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common and the matter involves

complex issues, the departmental proceedings may deserve to be deferred. The two proceedings - disciplinary and criminal are distinct and different. Both proceedings have different jurisdictional areas and different objectives. The purpose of the disciplinary action is the enforcement of service discipline and conduct required of him under conduct rules. The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The standard of proof in disciplinary proceedings is that of preponderance of probability. On the other hand the standard of proof in criminal case is proof beyond reasonable doubt. The Evidence Act is not applicable to the disciplinary proceedings while criminal trial has to meet the requirement of the Indian Evidence Act.

15. The issue whether the disciplinary proceedings and the criminal proceedings can continue simultaneously or the disciplinary proceedings should be stayed until conclusion of criminal proceedings caught the attention of the Supreme Court from time to time. Inter alia, these decisions are: (one) Delhi Cloth & General Mills Ltd. v. Kushal Bhan, A.I.R. 1960 SC 806 (two) Tata Oil Mills Co.Ltd. v. Workmen, A.I.R.1965 SC 155 (three) Jang Bahadur Singh v. Baij Nath Tiwari, A.I.R.1969 SC 30 (four) Kusheshwar Dubey v. Bharat

Coking Coal Ltd., A.I.R.1988 SC 2118 (five) Nelson Motis v. Union of India, A.I.R. 1992 SC 1981 (six) State of Rajasthan v. B.K.Meena, A.I.R. 1997 SC 13 and (seven) Depot Manager, Andhra Pradesh, SRTC v. Mohd.Yousuf Miya, A.I.R.1997 SC 2232.

16. However, we need not deal with the aforesaid decisions of the Supreme Court individually as all these decisions were considered in the case of Capt.M.Paul Anthony (supra). In M.Paul Anthony, the Supreme Court crystalised the conclusions in in paragraph 22 of the report thus:

> "22. The conclusions which are deducible from various decisions of this Court referred to above are:
>
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
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> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the chargesheet.
>
> (iv) The factors mentioned at (ii) and (iii)

above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

17. In the backdrop of the aforesaid legal principles, now we turn to the facts of the present case. On 6th September 1993 the incident occurred wherein it was found that the petitioner pocketed Rs.300/- in the manner already indicated above. The petitioner gave a statement in his own handwriting to the concerned Authority admitting therein that he received an amount of Rs.2955/- and issued the receipt for the amount of Rs.2955/-, but actual postage stamps of Rs.2625/- only were affixed on the parcel. The petitioner's statement which is in the nature of admission was produced in the disciplinary proceedings. The evidence like this was material evidence in the disciplinary proceedings to prove the petitioner's misconduct. However, the handwritten statement of the petitioner which was in the nature of his admission could not be and was not the part of the evidence in the criminal proceedings. Thus, the evidence in the disciplinary proceedings and the

criminal proceedings qualitatively differed as in the disciplinary proceedings the petitioner's own admission could be relied upon but that was not so in the criminal case.

18. In these peculiar facts, the judgment of the Supreme Court in Capt.M.Paul Anthony instead of helping the case of the petitioner clearly supports the view that has been taken by the Central Administrative Tribunal.

19. The view of the Central Administrative Tribunal is reflected in paragraph 7 of the impugned judgment which reads thus:

> "7. After hearing both the learned counsel and taking into consideration the facts on record, we find that the respondents have conducted the enquiry after following the prescribed procedure and rules. They have not violated the principles of natural justice. The applicant was given an opportunity to participate in the enquiry and to defend himself. His appeal and revision petition were also considered and the final order has been passed after due consideration of all the points raised by him. Taking into consideration the fact that the applicant had himself admitted the charges against him in his confessional statement dated 8.9.1993, we do not find any reason to interfere in the penalty imposed on the applicant which is not considered to be disproportionate to the gravity of the charge levelled against him. In so far as the judgment in the case of Capt. M. Paul. Anthony (supra) cited by the applicant is concerned, the facts and circumstances of that case vastly differ from that of the case under consideration. In that case the ex-parte departmental proceedings

> were initiated against the applicant, whereas, in the present case the applicant was given due opportunity to participate in the enquiry and he has also confessed his guilt. The facts and circumstances of both the cases are not similar. The benefit of that judgment cannot, therefore, be extended to the applicant in this case."

20. For the reasons which we have indicated above, we hardly find any flaw in the view of the Central Administrative Tribunal.

21. Writ petition, accordingly, has no merit and is dismissed with no order as to costs.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)